In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 925

DAVE EVANS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 930

JOSEPH AMABILE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners, together with Salvatore Battaglia, were convicted after a jury trial in the United States District Court for the Northern District of Illinois in April, 1967, of conspiring to obstruct interstate commerce by means of extortion in violation of the Hobbs Act, 18 U.S.C. 1951. Petitioner Amabile was sentenced

to fifteen years' imprisonment and petitioner Evans to ten years' imprisonment. On separate appeals (Battaglia's and Evans' being heard and decided together) the convictions were affirmed by the Court of Appeals for the Seventh Circuit with one judge dissenting (Ev. App. 1-45, 394 F. 2d 304; Am. App. 1-21, 395 F. 2d 47).[1] Motions by Evans and Battaglia for a remand were denied (394 F. 2d 327), as were their petitions for a rehearing *en banc* (Ev. App. 47). On separate petitions for writs of certiorari (*Evans:* No. 106, O.T. 1968; *Amabile:* No. 129, O.T. 1968; *Battaglia:* No. 168, O.T. 1968) to which the government filed a single response, this Court remanded the cases, along with a number of others (*sub nom. Giordano* v. *United States*, 394 U.S. 310), for further district court proceedings in conformity with *Alderman* v. *United States*, 394 U.S. 165; these proceedings related to three electronically overheard conversations involving Battaglia previously disclosed by the government to the court of appeals, which, after *in camera* examination, had held irrelevant. After a full evidentiary hearing on the remand, the district court found that the overhearings (which did not involve petitioners) did not taint the convictions, and reimposed the original judgments and sentences. The court of appeals affirmed, with one judge concurring on the question of eavesdropping but adher-

[1] "Ev. Pet." refers to the petition in No. 925 and "Ev. App." to the appendix to that petition; "Am. Pet." refers to the petition in No. 930 and "Am. App." to the appendix to that petition.

ing to his original dissents in the prior appeals (Ev. App 48-54; Am. App. 67-73).

Petitioners do not suggest any error in respect to the disposition of the eavesdropping question.[2] Instead, they have each resubmitted substantially the same petitions which they had previously filed and which were answered in detail in our prior brief in opposition.[3] Their claims in essence are that the evidence was insufficient to establish a conspiracy to commit extortion in violation of the Hobbs Act (answered at pp. 11-14 of our brief); that the Hobbs Act did not reach the circumstances developed in this case (answered at pp. 20-22 of our brief); that improper limitations were placed on defense cross-examination of the victim of the extortion (answered at pp. 17-19 of our brief); that the grand jury testimony of government witnesses should have been fully disclosed to the defense (answered at pp. 14-17 of our brief);

---

[2] Battaglia, the only defendant involved in the overhearings, received an extension of time until December 1, 1970, to file a petition for a writ of certiorari and his petition (No. 1032) was filed on that date; we will file a separate response.

[3] Amabile argues for the first time in his instant petition that the trial court committed prejudicial error by foreclosing cross-examination on the then current address of the victim of the conspiracy, who was the principal government witness (Am. Pet. 45-47). The same contention, however, was made by Evans and Battaglia in their prior petitions and answered in our prior brief. Both petitioners also now suggest that ascertaining the exact address was less important than establishing the witness' "relationship with the Government"—*i.e.*, that he was in protective custody (Am. Pet. 47; Ev. Pet. 23). As the court below pointed out, however, refusal to permit disclosure of the witness' actual address did not block other inquiries which could have developed such relationship (Ev. App. 52 n. 4; Am. App. 71 n. 4).

that improper limitations were placed on inquiries concerning Jencks Act material (answered at pp. 23-27 of our brief); and that the trial court erroneously precluded the defense from introducing reputation evidence (answered at pp. 22-23 of our brief).

We are filing herewith ten additional copies of our brief in opposition filed in the 1968 Term for distribution to the Court. For the reasons stated in that brief, it is respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
MARSHALL TAMOR GOLDING,
Attorneys.

DECEMBER 1970.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 410548 359